Graphic Communications Union, District Council No. 2, AFL–CIO *and* Riverwood International USA, Inc., a subsidiary of Manville Corporation. Case 31–CB–9122

August 31, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On May 22, 1995 Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Graphic Communications Union, District Council No. 2, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's discrediting of Bernard Sapiro's testimony that he sent contract language changes to Gary Brooks within a week or two of a meeting on March 12, 1993, we find it unnecessary to rely on Sapiro's prior affidavit testimony, because we agree with the other factors cited by the judge in discrediting this testimony: Sapiro's failure to keep a copy of the alleged changes in contract language or the cover letter which, he alleged, accompanied the changes; Human Resources Manager Gary Brooks' correspondence of March 26 and April 8, 1993, which are inconsistent with changes in contract language; Sapiro's June 6, 1993 cover letter that accompanied an alleged second mailing of the changes in the contract language but which does not mention that the changes were sent previously. In any event, the date on which Sapiro proposed subsequent unilateral changes in contract language is irrelevant to the issue of whether the parties had agreed on a contract, in the first instance. We have adopted the judge's finding that the parties agreed on the terms of their collective-bargaining agreement on December 12, 1992.

Ann Cronin-Oizumi, Esq., for the General Counsel.
Joseph L. Paller, Jr., Esq. (Gilbert & Sackman), of Los Angeles, California, for the Respondent.
Lawrence S. Falter, Esq., of Denver, Colorado, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK Administrative Law Judge. The underlying unfair labor practice charge in the above-captioned matter was filed by Riverwood International USA, Inc., a subsidiary of Manville Corporation (Riverwood), on August 30, 1993. Based on the unfair labor practice charge, on October 14, 1993, the Regional Director Region 31 of the National Labor Relations Board issued a complaint, alleging that Graphic Communications Union, District Council No. 2, AFL–CIO (Respondent) has engaged in, and is continuing to engage in, acts and conduct violative of Section 8(b)(3) of the National Labor Relations Act (Act). Respondent timely filed an answer, essentially denying the commission of the alleged unfair labor practices. As scheduled, the above-captioned matter came to trial before the me on May 11 through 13, 1994, in Bakersfield, California. At the trial, all parties were afforded the opportunity to offer into the record all relevant evidence, to examine and cross-examine all witnesses, to argue their respective legal positions orally, and to file posthearing briefs. The documents were filed by counsel for all parties and have been carefully considered. Accordingly, based on the entire record including the posthearing briefs and my observation of the testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT[1]

I. THE ISSUE

The instant matter concerns negotiations between Respondent and Riverwood on a successor collective-bargaining agreement, particularly with regard to the establishment of a line-of-progression system for the latter's Bakersfield, California plant finishing department and the seniority system applicable to the employees in the department after the implementation of the line-of-progression system. Counsel for the General Counsel contends that, eventually, Respondent and Riverwood reached a full and complete agreement on the terms of a successor collective-bargaining agreement, including on the matters involving the finishing department, and the complaint alleges that Respondent violated Section 8(b)(3) of the Act by failing and refusing to execute a printed version of the parties' alleged full and complete collective-bargaining agreement. While conceding that it has failed and refused to execute a document, purporting to represent the parties' agreement on a collective-bargaining agreement, Respondent denies that it engaged in any conduct violative of the Act, asserting alternatively that, while there may have been a meeting of the minds on a collective-bargaining agreement, the printed version does not conform to the agreement; that the parties never reached final agreement regarding seniority in the finishing department; and that there was no meeting of the minds regarding the seniority structure in the finishing department.

[1] Respondent admits the jurisdictional aspects of the instant complaint, including that Riverwood is an employer engaged in commerce and in a business affecting commerce within the meaning of Sec. 2(6) and (7) of the Act. Further, Respondent admits that it is a labor organization within the meaning of Sec. 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

Riverwood,[2] a subsidiary of the Manville Corporation, is a State of Delaware corporation; is engaged in the manufacture and sale of paper beverage cartons for soft drink and beer manufacturers; and maintains multiple manufacturing facilities throughout the United States including a plant, comprised of one building, in Bakersfield, California. At the the facility, depending on the time of year,[3] Riverwood employs between 120 and 200 individuals, working in several departments, including cylinder, prepress, printing, finishing, maintenance, and shipping, and receiving. The record establishes that, in 1989, Respondent was certified as the representative for purposes of collective bargaining of the production and maintenance employees employed at Riverwood's Bakersfield plant[4] and that, in the same year, Riverwood and Respondent entered into a collective-bargaining agreement, effective from September 4, 1989, through September 4, 1992.

Pertinent to any conclusions as to the alleged unfair labor practices here is an understanding of the seniority systems at Riverwood's Bakersfield plant, as defined in the 1989 through 1992 contract, and how such affected employees in the Respondent's finishing department. In these regards, the plant's departments, in which bargaining unit employees worked, were divided into line-of-progression and nonline-of-progression departments. In the former, including the prepress and printing departments, jobs were related in that employees in such a department began on what are classified as entry level jobs and progressed through various higher classified jobs, eventually earning promotion to the highest classified job in the department, and, in such departments, what is known as the ''job center'' included all jobs within the line of progression. In nonline-of-progression departments under the 1989 through 1992 agreement, including the finishing department, the jobs were not considered related, and each particular job constituted a separate job center, a so-called ''stand-alone'' job.[5] As an employee worked in a bargaining unit position, he or she earned two types of seniority, as established by the contract. The first, plant seniority, consisted of the employee's ''total, continuous, and uninterrupted length of service with the Company served within the bargaining unit since [the employee's] most recent date of hire'' and was determinative for promotion or transfer whenever vacancies occurred in nonline-of-progression jobs or in entry level line-of-progression jobs and whenever layoffs were required. In latter instances, an employee, with higher plant seniority, was able to displace a junior employee in an entry level line-of-progression job or in any nonline-of-progression job. The other seniority, job seniority, consisted of the employee's ''total cumulative service with the Company served within a job center since [the employee's] most recent date of hire'' and was determinative whenever a permanent vacancy occurred in a line-of-progression job above the entry level (so that the job was given to the individual who had the most job center seniority and was working in the wage classification directly below the vacancy)[6] and whenever layoffs were required in entry level line-of-progression jobs, in stand-alone jobs, and in line-of-progression jobs above the entry level, in which case layoffs were accomplished by demotion in the reverse order of promotion.

As stated above, at the time they entered into their initial collective-bargaining agreement, Respondent and Riverwood agreed that, other than the assistant operator and operator jobs, the finishing department jobs would not be in a line of progression. Accordingly, plant seniority was determinative for filling vacancies and for transfers between the four stand-alone jobs[7] and to the assistant operator position and when reductions in force became necessary. At some point, however, during the term of the agreement, Riverwood abolished the assistant operator position, and concluded that, with five separate job centers and with plant seniority the criterion for filling vacancies, there was a paucity of qualified and experienced personnel for the jobs in the finishing department. Thus, according to Broughton Kelly, ''we had those [five] job centers. And to fill . . . any of those jobs, we had to post that job for everybody in the plant . . . so we didn't know who was going to go into the jobs.'' Although for different reasons, over the term of the 1989 through 1992 collective-bargaining agreement, finishing department employees also became increasingly dissatisfied with the existing situation in their department. Thus, according to Bernard Sapiro, Respondent's president, dissatisfaction resulted from what occurred during reductions of force, or ''regressions,'' as employees, possessing greater plant seniority, were able to avoid losing their jobs and, in turn, adversely impact less senior finishing department employees by bumping into the jobs of the latter and from the placement of the assistant operators, whose jobs were abolished, into inferior seniority positions.

2. The negotiations for a successor agreement and ratification of the agreement

There is no dispute that Riverwood and Respondent commenced negotiations on a successor to the contract, which was due to expire on September 4, on August 20, 1992; that Kelly was the chief spokesperson for Riverwood and attended each bargaining session; that Sapiro was the chief spokesperson for Respondent at the bargaining sessions that

[2] Riverwood was formerly known as Manville Forest Products, changing its name in 1990.

[3] Riverwood's business is seasonal in that employment at the Bakersfield plant fluctuates in accord with demand from the beverage industry, and, therefore, Respondent's employee complement is at its peak from February through September each year.

[4] Excluded from the bargaining unit are quality technician personnel, managerial personnel, office clerical personnel, guards, and supervisors as defined by the Act. Respondent admits that the bargaining unit is a unit appropriate for collective bargaining.

[5] In the finishing department, there were four stand-alone jobs (case stacker/utility, packer, feeder, and make ready operator) and one line-of-progression job center, consisting of assistant operator and operator.

[6] Apparently, an employee may not refuse promotion in line-of-progression jobs. Further, the employee's seniority consisted on his total time spent in each of the line-of-progression jobs.

[7] Broughton Kelly, Riverwood's director of human resources, explained that the system worked as follows: ''the company would post a notice on the bulletin board that there was a vacancy in the packer classification, and all the employees in the plant could submit a bid for it.''

he attended;[8] that, in Sapiro's absence, Jeff Cuellar, a business representative, was the chief spokesperson for Respondent; that the bargaining consumed 15 negotiating sessions over approximately a 4-month period; that the parties agreed to reduce all agreements to writing; that the parties' final bargaining session occurred on December 10 after which the participants shook hands on what all agreed was a full and complete successor collective-bargaining agreement; that all new terms and conditions of employment were reduced to writing by Riverwood and given to Respondent; that these memorialized contract terms were presented to the bargaining unit employees 2 days later on December 12 and ratified by the employees; that, immediately thereafter, Cuellar telephoned Gary Brooks and informed him that the parties' agreement had been ratified; and that what is at issue herein concerns the parties' bargaining over the finishing department and the applicable seniority system for the department, what, if any, matters, with regard to the finishing department, remained for resolution subsequent to ratification, and whether subsequent discussions between the parties over the seniority ranking of employees in the finishing department revealed that, notwithstanding what apparently occurred during the bargaining, there had, in fact, been no actual meeting of the minds on a new agreement. In the latter regard, according to Kelly, at the start of bargaining, ''both the company and the union had proposals [for a] finishing department line of progression. They were somewhat different from each other but both of us were proposing a line of progression for finishing.'' He added that the difference was that Respondent's proposal separated the feeder and packer positions while Riverwood's offer combined the two jobs into one position and that, on September 3, after much ''give and take'' on the merits of both positions, the parties agreed to establish a line of progression for the finishing department in accord with Respondent's proposal, with the details of the agreement memorialized.

Although there is no dispute on this point and on the fact that the subject next arose at the parties' bargaining session on October 6, there is significant disagreement about the content of the continued bargaining. Thus, Kelly testified that, on the above date, Respondent raised the subject of seniority in the finishing department and the method the company would use in determining it for each employee in the departments and that he replied seniority would be determined ''in accordance with the contract'' for line-of-progression departments and described the procedure, explaining that ''we would take the time that each . . . person had worked in each one of those classifications and added up . . . that would be [the] job center seniority for the finishing line of progression'' and that only those employees ''currently'' in the department would be on the seniority list. Stating that neither Sapiro nor Cuellar objected,[9] Kelly testified that the parties then discussed, and understood, that the ''only thing that was left was to . . . search personnel files and count the number of days in each classification to determine [the current department employees'] job center seniority'' and that said task would be ''time consuming'' and would be undertaken by Gary Brooks. Kelly also testified that Thursday, December 10, was the final day of bargaining; ''we negotiated to a resolution on what the economic offer would be and in the final contract language.'' At the conclusion of the meeting, he agreed to prepare the ''gold copy'' of their agreements,[10] which represented Riverwood's ''final and best offer'' to Respondent, and send it to Sapiro, who would use it for purposes of ratification.

As to what, if anything, regarding line-of-progression seniority in the finishing department, was deferred, by Riverwood and Respondent, for resolution after ratification of the successor collective-bargaining agreement, during his cross-examination and his rebuttal testimony, Kelly denied stating, at the October 6, 1992 bargaining session, that ''details,'' regarding line-of-progression seniority in the finishing department, had to be worked out subsequent to contract ratification and consistently maintained that the only unresolved matter, to which he referred, was the seniority list itself, which was to be researched by Gary Brooks. The latter, who concurred with Kelly's version of the contract negotiations[11] and recalled that Kelly stated several times, during the bargaining, that Respondent would ''follow the contract'' in computing the seniority of employees in the finishing department, during cross-examination when asked if any ''detail work'' remained after the bargaining for determining how the line-of-progression seniority in the finishing department would be implemented, testified, ''I had to put the structure together by gathering the data from the personnel files . . . and [come] up with the results of that in a job center seniority structure . . . that's basically what I had to do.'' Thereupon, Brooks was shown what he identified as his notes of the October 6 bargaining session wherein the following exchange between Kelly and Sapiro appears:

> B.S. May want to clarify 7A Finishing—When what is the status of seniority in case of layoff—would bumping be by junior person i.e. packer.
>
> B.K. Normally would be the junior packer. There are a of [sic] details which will be worked out to take care of the moves.
>
> B.S. Job center—The dept is known as a job center now?
>
> B.K. Yes!! We need to work out the detail. We've agreed to line of progression. Don't know when we should work this problem.

[8] Also attending each bargaining session for Riverwood was Gary Brooks, the human resources manager at the Bakersfield plant. Brooks also was responsible for taking the Company's bargaining notes and testified that he attempted to do so by ''highlight[ing]'' what each person said in an ''accurate'' manner without paraphrasing.

[9] Kelly stated the Respondent's negotiators clearly understood that the method to be utilized for determining the seniority order of employees in the finishing department was the same method used for compiling seniority in all other job center line-of-progression departments.

[10] Included in this ''golden-rod'' are written versions of all the agreements reached during the bargaining. Respondent does not dispute the accuracy of this document.

[11] With regard to the parties' last bargaining session, December 10, 1992, Brooks stated that, at its conclusion, Sapiro said, ''We have an agreement,'' and that everyone shook hands and exchanged telephone numbers for the purpose of notification of the contract's ratification. He added that the ''golden-rod'' version of the agreement was delivered to the Union that night and that, 2 days later, Jeff Cuellar telephoned him and said, without qualification, that the successor agreement had been ratified.

Brooks testified that Kelly offered no explanation for what he meant by ''details'' but that he understood Kelly as ''meaning pulling the files, getting the records in order, developing job center seniority, number of days for the employees.'' Likewise, on this same topic, Anthony Aguiler, who was employed by Riverwood in the finishing department until he quit his job on December 15, 1992, who was on Respondent's negotiating committee and attended all the bargaining sessions, and who testified on behalf of the General Counsel, stated that establishment of a line-of-progression system in the finishing department was discussed at more than one of the parties' bargaining sessions, that agreement on the matter was ultimately reached, that the parties discussed that seniority was to be based on ''the time you had in the . . . . finishing department,'' and that, as to whether anything remained to be resolved with respect to the line-of-progression in his department, ''the details . . . I mean the union stewarts [sic] and whoever was involved in that were going to work out the details of where everybody was supposed to go in the line.''[12] According to Aguiler, he never learned what these ''details'' were but always understood that ''the details were to be worked out with the company and the union . . . after . . . the contract was over.''[13]

With regard to the contract bargaining, Armando Flores, an employee in the finishing department and Respondent's chief steward in the Bakersfield plant, testified that Sapiro made the Union's presentation regarding a line-of-progression for the finishing department and that Broughton Kelly ''said he didn't want anybody to get hurt. And, both sides agreed on this, that nobody would get hurt by the new line-of-progression.''[14] Asked if the parties discussed what would govern the seniority determination for who would get what jobs in the department, Flores replied affirmatively that the parties agreed it would be ''the time you've got in that job, the amount of days, years that you've had doing the . . . job . . . that's what would govern . . . where you would go.'' On this point, asked if any issues remained to be resolved after the completion of bargaining, Flores testified that there were ''some mechanics'' and ''some other little things that we had to get written up'' and that ''it would be the committees, both committees,'' who have to resolve these matters. During cross-examination, Flores could not recall that Riverwood presented its own proposal on line of progression for the finishing department or that Gary Brooks was to search through the personnel records in order to formulate a seniority roster for the finishing department employees. Further, while reiterating that the agreed-on seniority was that the person in the job the longest would have the highest seniority notwithstanding that others may have been in the finishing department for a longer period of time, Flores admitted that, in the 1989 through 1992 contract, total service in all jobs determined seniority in a line-of-progression department; that he saw no written proposals changing this contract provision; that the parties agreed that all agreements would be reduced to writing; and that he could not recall anything in writing to verify what he asserted as the parties' agreement on seniority in the finishing department. Finally, Flores said that he could not recall any company representative saying, during bargaining, that, in determining line-of-progression seniority, they would use all the time in the job classification and conceded that the parties shook hands at the conclusion of their final negotiating session.

Bernard Sapiro testified, during direct examination, that the parties reached agreement on the line of progression for the finishing department on September 3, 1992, and that the issue again was raised at the parties' October 6 bargaining session, with the discussion concerning the ''impact'' of the change to line of progression on the employees in the department and how seniority would be determined. According to Sapiro, he and Kelly realized that discussion of the matter would be ''forever'' and ''the conclusion was that the local people better understood . . . where [the employees] should be and it was left for the local . . . negotiating committee and local management to hammer out what we both agreed upon.'' Specifically denying that such was to be the sole responsibility of the company, he added that the two local bargaining committees were supposed to meet and determine where each employee fit into the finishing department's seniority list and that such constituted the ''details'' to be resolved. Sapiro next testified as to the December 12 contract ratification meeting, stating that he utilized the ''golden-rod'' copy, which represented ''the changes and the other things necessary to create a new contract'' and which ''at that time . . . appeared that it was what we agreed to,'' that significant time was devoted to discussing the line of progression for the finishing department, that he told the bargaining unit employees that the union and company would meet on the local level ''so that people will either not be harmed or harmed as least as possible,'' and that the agreement, between Respondent and Riverwood, was ratified by the employees. During cross-examination and examination by me, Sapiro conceded that, during the successor contract bargaining with the company, the only items, which were discussed, were those raised by either party, neither party proposed any change in the seniority provisions of the expired collective-bargaining agreement, there was an agreement that, unless the parties agreed on a language change, the existing contract language would remain unchanged, and there was no agreement that the existing seniority provisions would not apply to the finishing department line of progression.[15] Sapiro then quickly pointed out that, as neither party proposed any change in the seniority language, the provisions were never discussed in any context and, with regard to the finishing de-

[12] Asked by me whether what remained to be worked out between the parties was where each employee should go in the finishing department line of progression, Aguiler answered, ''That's correct,'' and asked if anything else was deferred to another occasion as to the line-of-progression, Aguiler replied, ''Not that I remember, no.''

[13] As did Kelly and Brooks, Aguiler recalled that everyone shook hands at the conclusion of the last bargaining session.

[14] This became a contentious issue at the trial with both Kelly and Brooks vehemently denying that Kelly uttered such a remark or agreed to the proposition. Thus, Kelly said, ''I made no reference to hurt or harm or how many. . . . I told them we would apply the labor agreement to determine the job center seniority of the people. . . . I couldn't tell them the extent of the changes.'' Brooks likewise denied hearing Kelly state that Riverwood's intent was that no employees or the fewest number would be hurt by changing to the new system.

[15] In fact, at one point during his cross-examination, Sapiro tacitly conceded that Kelly may have said that the company would follow the contract in ''flushing out'' the details of the line-of-progression seniority in the finishing department, ''I wouldn't say he didn't say it.''

partment, ''every time we began discussing what the format would be . . . we never referred to a contract section. And, every time we began discussing [where to place people] . . . logic told us that this was not the place or body to do this.''[16] Further, during cross-examination, while asserting that he and Kelly had stated that each wanted to protect employees' seniority and did not want anyone to suffer, Sapiro conceded that there was no reference in Respondent's own bargaining notes to any statement or agreement by Riverwood's representatives that no finishing department employee would be harmed by the change to a line-of-progression system. Also, Sapiro conceded that, despite the parties' understanding that all bargaining agreements were to be reduced to writing, no written reference exists confirming any agreement to defer any matters for resolution to the local bargaining committees. Finally, while he maintained that what would be accomplished subsequent to ratification ''was supposed to be worked out by mutual agreement,'' Sapiro conceded that the details, which were deferred until after ratification, involved only the slotting of finishing department employees into a seniority roster and that Gary Brooks would be the individual who would search the records and prepare a seniority list.[17]

2. Events subsequent to ratification

Broughton Kelly testified that, on Saturday, December 12, Gary Brooks telephoned him and said that he had been informed that the proposed contract had been ratified, and that, as a result, Riverwood implemented all of the economic aspects of the agreement, including all wage increases and a $200 bonus for each employee ''for the elimination of a rate retention situation.'' Approximately 2 months later, on February 9, 1993, Brooks sent him a job center seniority roster for the 48 employees in the finishing department along with a cover letter, in which Brooks stated that he had a ''preliminary'' discussion with Respondent's chief steward, Armando Flores, who said the list ''is not what he expected.'' Kelly testified that, 2 months later, on or about April 12 or 13, Brooks sent General Counsel's Exhibit 12, the draft collective-bargaining agreement that memorialized all the negotiated changes that had been ratified by the bargaining unit employees in December and merged these with the unaltered provisions of the expired collective-bargaining agreement,[18] to Respondent and that, at about the same time, he received a telephone call from Jeff Cuellar, who said that there was a concern with seniority, in particular ''[the] number of days that people had using job center seniority was different than what it would be if they just used job classification.''[19] Cuellar then asked if Kelly would be available for a conference call, and the latter subsequently arranged such a telephone conference,[20] which occurred on May 3.[21] According to Kelly, Cuellar again said that Respondent had a ''problem'' with the seniority order of the finishing department employees, and ''we talked about methodology that we used was the same as provided by the contract. We talked about a different alignment of people. I said what we did [was the same seniority measure as in all other line of progression departments] . . . . He said . . . we're having problems with it'' and proposed drafting different contract language and sending it to Kelly, who replied that ''we did it the way we agreed to do it. If you want to talk about something else . . . send it, but we have done it the way we described.''[22]

A month later, Kelly received a two-page document, which was dated June 7, 1993, was drafted by Bernard Sapiro, consisted of a cover letter and an attachment, and contained suggested contract language changes, from Respondent's negotiating committee. The cover letter stated, ''It was agreed to, during negotiations, that nobody would suffer any change in seniority earned in their job classification. Our changes reflect these agreements as negotiated.''[23] The suggested contract language changed the promotion and demotion, layoff, and recall provisions of the expired collective-bargaining agreement and the draft collective-bargaining agreement, which had been sent by Riverwood to Respondent in April, by recognizing the concept of job classification seniority for filling vacancies in the finishing department line-of-progression jobs above the entry level and by eliminating language in the reductions in force in line-of-progression jobs provision.[24] At about this same date, Respondent sent its version of the parties' agreed-on collective-bargaining agreement, containing the above language changes, to Riverwood. Shortly after receiving the suggested contract language changes and Respondent's collective-bargaining agreement, which contained the suggested changes, on June 11, Kelly telephoned Cuellar. ''I told him we were concerned

[16] Sapiro conceded that he did not specifically object to the application of the contract's line-of-progression department seniority language to the finishing department line-of-progression and that ''if by not discussing it means we agreed to it, I guess there's logic to that.''

[17] In this regard, Sapiro recognized that developing a seniority roster for the finishing department was not part of the negotiations for a successor contract, ''in the contract language is not the flushing out of how it's going to effect everybody, you don't need that in the contract language.''

[18] There is no contention that G.C. Exh. 12 inaccurately sets forth the parties' prior agreements.

[19] As I understand from the record seniority, based on job classification, would give seniority on a particular job to the individual who had worked the most days in that one job. There is no dispute that such was not a seniority basis in the 1989 through 1992 collective-bargaining agreement.

[20] That this conversation occurred was uncontroverted by Cuellar, who failed to testify at the hearing notwithstanding that he remained in Respondent's employ at the time of the hearing and notwithstanding my admonition to counsel for Respondent that Cuellar's testimony appeared to be necessary. Counsel stated that Cuellar would not testify but never offered an explanation for such.

[21] Apparently, with the exception of Kelly, who spoke from his office in Atlanta, Georgia, all the participants were in a conference room at the plant.

[22] Kelly was not sure if specific individuals were discussed but knew from prior conversations with Brooks that, as a result of the seniority list prepared by the latter, some employees would be placed on different shifts, others, including Armando Flores, would lose shift preference, one employee would be bumped from a classification, and some faced demotion to other jobs during slack seasons.

[23] Kelly and Gary Brooks consistently denied the statement in the cover letter. According to Kelly, ''We never discussed changing anybody's seniority in a classification. . . . We never made such a commitment because we did not know where the seniority of the people would wind up. All that information was to be determined later.''

[24] Kelly denied that Riverwood ever agreed to these contract language changes, and Sapiro conceded that the changes were never a subject of the bargaining during 1992.

about the status of the labor agreement, that it had been ratified by the membership . . . in December. Here it is 6 or 7 months later. We do not have a signed labor agreement from the union at this point in time. . . . we have filled our commitments and the question was, do we have a contract? And where is it? And he said yes we do.''[25] According to Kelly, given what Cuellar said, he immediately telephoned Sapiro and asked, ''about getting a signed labor agreement, and he told me . . . we don't have a contract.''[26]

Gary Brooks testified that, subsequent to the ratification of the successor collective-bargaining agreement and Riverwood's resulting implementation of the contract's bonus payment and other financial items, as the Company's peak business season would begin in February, he immediately commenced the task of pulling personnel records in order to determine each finishing department employee's job center seniority.[27] After approximately 700 man-hours of work, he completed a draft seniority list for the finishing department on or about February 8, 1993, called Armando Flores, the chief steward, to his office, and showed it to him as a matter of ''courtesy.''[28] Flores ''reviewed it and responded that this was not what they were looking for'' and, as a result, Brooks sent his above-described February 9 memo to Broughton Kelly. Brooks further testified that, on February 12, along with Bill Hodges, the Bakersfield plant manager, and Robert Abello, the finishing department manager, he met with Jeff Cuellar and Flores in order to discuss a pending grievance and his draft seniority list for the finishing department. With regard to the latter subject, Cuellar ''indicated that there were some problems with the job center seniority and how people fell into the position.'' Brooks replied that he ''needed . . . some help if there's another way to do it, then . . . show me.'' The meeting ended with Respondent's representatives saying they would respond within 10 days.

As a result what occurred on February 12, another meeting was scheduled for, and held on, March 12 in a conference room at Riverwood's plant. Along with Bernard Sapiro, the same participants, who attended the previous meeting, were present, and Brooks began by distributing a multipage document, consisting of the seniority, promotion, and demotions, layoff, and recall sections of the previous collective-bargaining agreement (3 pages);[29] the line-of-progression seniority list for the finishing department which ranks each employee in job center seniority order (1 page); a ''roll-up'' seniority list, which ranks each finishing department employee in job center seniority order and which sets forth each employee's days of work in each finishing department job (1 page); and the job center order of seniority rankings for every job in the finishing department (15 pages), to each participant. Then, utilizing an overhead projector, Brooks displayed the contract pages, the complete job center seniority list, the roll-up seniority list, and one of the job center seniority lists for a particular job in the finishing department and explained each document to the participants. According to Brooks, his presentation engendered some ''debate'' and ''discussion,'' with Respondent's representatives contending that 13 finishing department employees had been ''adversely effected'' by the use of job center seniority and suggesting that ''classification seniority,'' the total time spent in a particular job,[30] be utilized as the governing principle for determining seniority for employees in the operator classification and that job center seniority be used for all other employees in the finishing department. In response, according to Brooks, he was adamant that, in view of the specific seniority language of the agreed-on and ratified successor collective-bargaining agreement, classification seniority was not an option,[31] ''and that's what I basically presented.'' Brooks denied that anyone gave him with any revised contract language during the meeting.

Although maintaining that he never agreed to use classification seniority for any employees in the finishing department, 2 weeks later, on March 26, Brooks mailed examples of two finishing department seniority lists to Cuellar—the first, in accord with Respondent's representatives' suggestion at the March 12 meeting, ranked the operators in classification seniority order and the department's remaining employees in job center seniority order[32] and the second list ranked all of the department's employees in job center seniority order. In his cover letter, Brooks stated that ''because of the contract language on seniority, Management is submitting the second example . . . as the proper method in compliance with the contract.'' Thereafter, on April 8, Brooks sent to Cuellar a seniority list, which Riverwood intended to post as the finishing department's employees' seniority ranking and which was compiled on the basis of job center seniority. In a cover letter, Brooks stated:

> As I have indicated . . . [Respondent's] version of Classification Seniority will not work under the current contract language. There are only two types of Seniority according to the contract . . . . To develop a system of seniority outside of the contract language would violate the contract terms, and would be discriminatory,

[25] Inasmuch as he was not called as a witness, Cuellar did not deny this conversation.

[26] There is no dispute that Respondent has failed and refused to execute G.C. Exh. 12, the proffered draft collective-bargaining agreement.

[27] Brooks testified that he utilized the same method for calculating seniority as was mandated by the previous collective-bargaining agreement for line-of-progression departments.

[28] Respondent would argue that such began the negotiations on the seniority roster for the finishing department. In contrast, in accord with Brooks, Broughton Kelly was adamant that no negotiations were to occur with regard to the roster and that ''we shared [the data] with people. We shared that with the steward, we shared it with the union. . . . But there were no negotiations about the procedure to determine how they were going to do this.''

[29] None of the language of the included contract provisions had been altered or modified by the parties during the negotiations for the successor collective-bargaining agreement.

[30] Brooks denied that classification seniority had ever been utilized at the Bakersfield plant as a seniority computation method.

[31] In answering my question, Brooks denied telling Respondent's representatives that the contract language would have to be changed to accommodate the method by which Respondent desired to compute seniority. During his rebuttal testimony, Brooks explained that, at the March 12 meeting, he told Respondent's representatives that he understood what they wanted in terms of seniority but that the contract language was quite specific, ''The language says this is the way I have to do it. This is the way it projects, and if you want it any other way, I can't do that for you.''

[32] During cross-examination, Brooks denied showing any classification seniority list to Respondent's representatives on March 12 ''because it was not developed until after the March 12 meeting, so that I could show them what classification seniority would do vs. what job center seniority would do.''

> preferential and illegal. Within the Finishing Department, there is only one job center. Thus, seniority within the Finishing Department ''job center'' determines a worker's job center seniority. For example, when an Operator moves (down) into the Feeder classification, they do so according to their job center seniority in the Finishing Department. Also, when a Feeder moves (up) into the Operator classification it must be done according to job center seniority . . . .

Corroborating Kelly, Brooks testified regarding the May 3 conference telephone call for which representatives of Respondent and of Riverwood gathered in a conference room at the plant and spoke with Kelly, who was in Atlanta. According to Brooks, ''their discussion centered around job center seniority, some thoughts about language . . . the way it was laid out. And . . . the differences between job classification seniority as opposed to job center seniority.'' The conversation then turned to particular individuals who were adversely affected by the change from plant to job center seniority when the finishing department became a line-of-progression single job center. Brooks recalled that, while the participants discussed the affect of the aforementioned seniority basis change, Cuellar, asserted, for the first time, that, during the 1992 bargaining, Riverwood's representatives had promised that no one would be harmed. Both he and Kelly immediately denied that such a commitment had been made.

Armando Flores testified with regard to the March 13 meeting, recalling being present when Brooks presented slides, depicting different seniority systems. According to him, the subject of the meeting was the line-of-progression in the finishing department, and ''the discussion was on where the people were going to be slotted in. I mean the seniority was going to place them in.'' Continuing, Flores said that, previously, ''we had agreed upon the line of progression. . . . that we'd talked about in negotiations,'' and he believed that the parties had agreed who would be placed where. At one point in the meeting, according to Flores, ''Mr. Brooks . . . said he couldn't do anything unless we had changes on the progression, on the wording of it. . . . And Mr. Sapiro got the contract and he scratched out some words . . . so we could go with the line of progression.'' He added that Respondent's committee discussed and approved what Sapiro had done, and Sapiro gave the changes to Brooks, who said he would discuss these with Hodges because he didn't have authority to agree. During cross-examination, Flores recalled that, in February, Brooks showed him a finishing department seniority list, and ''I [remember] telling him that was not what was proposed and that's not what we had agreed upon.'' Flores denied looking for his own name on the list. During cross-examination with regard to the March 12 meeting, Flores couldn't recall whether Brooks distributed any of the materials, which he used for his overhead projections, and, with regard to Sapiro's written suggested changes in contract language, he recalled, ''I think he gave it to [Brooks] or he suggested to [Brooks] what [the new language should be].'' On the latter point, ''I'm saying I don't recall if he physically gave it to [Brooks] or he told [Brooks] verbally . . . what to do.'' As to what Sapiro was proposing, Flores then conceded that what the former was doing was changing the contract language to accommodate what Respondent wanted the seniority system to be in the finishing department; that Brooks' response was that he did not have the authority to do that but would check with the plant manager; and that the existing contract language would not permit what Respondent was seeking.

Bernard Sapiro recalled that, pursuant to a request from Jeff Cuellar, he was present at a meeting at Riverwood's Bakersfield plant on or about February 12, 1993. He testified that the meeting lasted several hours; that the purpose of it ''was to attempt to work out . . . some differences between the company and the union local committees on how the new progression in the finishing department was to be applied''; and that ''we discussed how . . . the seniority in the finishing department with the new progression was going to be applied'' and ''a conclusion'' was reached. Sapiro further recalled that no specific employees were discussed—just ''jobs and classifications''—and that Brooks said, at the end, that he wanted ''to survey'' the packers in the finishing department as to which wished to be promoted and which did not.[33] Sapiro next testified regarding the March 12 meeting, which was held in the conference room at the plant, lasted several hours, and was attended by Brooks and one or two other company officials and by himself, Cuellar, Flores, and other bargaining unit employees. He recalled that Brooks utilized ''a slide show'' of three different seniority lists; that there were papers attached to a blackboard; that Brooks explained, ''why he put people there, why he gave them this credit and that credit and it was a very thorough explanation'' as to where employees fit into the seniority lists and why each list had different placements; and that Brooks answered questions from Respondent's representatives. According to Sapiro, when Brooks concluded, ''there was a discussion and there were some questions on whether a particular person should be here or there.'' As a result, ''there was some movement of individuals . . . but there didn't seem to be much difference of opinion on what the movement should be'' and Brooks, Cuellar, Flores, and the other participants agreed that much of what was discussed ''made sense.'' Continuing, Sapiro testified that, when he was about to leave the meeting, Brooks announced, ''that he could not implement this schedule without a change in the contract language. . . . I said . . . yes you can, let's just do it . . . we spent a heck of a lot of time and a lot of trouble and let's just do it. . . . He said I can't do it without a language change. And I said I think you can.''[34] Thereupon, according to Sapiro, he and Brooks engaged in an argument over who should propose the contract language changes, with each saying the other should do so. At this point, Sapiro testified, he met with Cuellar, Flores, and the other employees and suggested some changes in the contract seniority language.[35]

[33] Testifying on rebuttal, Brooks denied seeing Sapiro at any time between December 10, 1992, and March 12, 1993, or having any telephone contact with him. Further, he denied taking any ''survey'' of the packers; rather, Department Manager Abello spoke to each packer on February 18 and 19 as to whether he desired to sign a 1-year waiver for joining the line-of-progression seniority list.

[34] Sapiro asserted that this was his first inkling that there was a problem with the line-of-progression system and believes that Respondent was ''tricked'' in this regard.

[35] Sapiro asserted that he made these changes on a ''flat'' copy of the expired collective-bargaining agreement, which had been distributed by Brooks at the start of the meeting.

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Then, ''I brought [the contract language changes] back to Mr. Brooks after clearing it with the committee and Mr. Cuellar,'' and the latter ''said it looks okay to him but he has to run it by other people that he can't make that decision.''[36] Conceding that what he did was changing the seniority terms of the parties' December 10 agreement, which had been ratified by the bargaining unit employees, Sapiro averred that he did so ''because Mr. Brooks said he couldn't do what we mutually agreed we wanted to do . . . without a change in the contract language.'' Sapiro testified further that he returned to his Los Angeles office after the meeting and that, ''within a week'' of the meeting and certainly ''within two weeks,'' he prepared the second page of General Counsel's Exhibit 13, the document received by Broughton Kelly on or about June 7,[37] and immediately mailed a copy to Gary Brooks. Conceding that the latter never requested that he do so, Sapiro stated that he drafted the proposed contract language changes based on ''the fact that this . . . [had been] written in haste'' and ''because if he was going to run this by other people in [the original] form, I didn't think it was . . . appropriate'' and that, just as he did in June, he mailed the document to Brooks with an attached cover letter.[38]

Sapiro next testified that he heard nothing from Riverwood until receipt of the written version of the parties' successor collective-bargaining agreement from Brooks in early April. Sapiro noted that the draft agreement contained none of the language changes, which he had submitted to Brooks, considered it to be a ''response'' to the proposed changes, but ''made no immediate response because Mr. Brooks was responsible for getting the contract straightened out.'' Thereafter, sometime during the next 2 months but prior to June 7, Sapiro telephoned Kelly, and attempted ''to explain why we couldn't sign the contract since the person administering the contract said they couldn't implement the seniority provision . . . that both parties wanted . . . implemented. And, what was his objection to my language . . . And his reply was . . . that Gary Brooks says . . . with the language in the contract . . . he can't implement what he finally agreed to. . . . Gary's probably right.'' Sapiro replied that the issue was not whether or not Brooks was correct but to get the matter resolved. Kelly then ended the conversation with the comment, ''you sign the contract first and then we'll discuss any modifications;'' Sapiro declined to do so.[39]

During his cross-examination regarding events subsequent to ratification of the December 10 successor collective-bargaining agreement, Sapiro admitted that, in the cover letter of General Counsel's Exhibit 13, his June 7 letter and attachment to Kelly, his reference to negotiations was to those that ended on December 10, 1992, and there was no reference to what assertedly occurred on March 12 and that, neither on nor after March 12, did Brooks, on behalf of Riverwood, ever accede to Respondent's contract language proposal. He also admitted that Respondent has refused to execute the memorialized version of the parties' December 10 agreement, stating that Respondent could not do so unless the seniority clause language is changed to perpetuate the parties' intent. Further, while claiming a lack of knowledge as to whether Respondent ever proposed classification seniority during the 1992 negotiations, he conceded that the parties did not agree to change the existing seniority language but added that, at the time of ratification, ''we had no idea that there was a need for a language change in order to implement.''

B. *Legal Analysis and Conclusions*

The complaint alleges that Respondent engaged in conduct, violative of Section 8(b)(3) of the Act, by failing and refusing to execute the General Counsel's Exhibit 12, the draft collective-bargaining agreement that embodies the parties' December 10, 1992 agreement on a successor collective-bargaining agreement. There is no dispute as to the applicable legal principles herein. Thus, there can be no question that an employer fails to bargain in good faith when it fails in its obligation to execute a memorialized collective-bargaining agreement, which fully encompasses the terms of an agreement between itself and a labor organization. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). It is equally well established that a labor organization breaches its concomitant duty to bargain in good faith with an employer, and acts in violation of Section 8(b)(3) of the Act, when it refuses, on request, to execute a written collective-bargaining agreement, which fully and completely embodies whatever agreements the parties have reached. *Teamsters Local 617 (Christian Salvesen)*, 308 NLRB 601, 602 (1992); *Auto Workers Local 365 (Cecilware Corp.)*, 307 NLRB 189, 192 (1992); *Teamsters Local 70 (Emery Worldwide)*, 295 NLRB 1123 (1989); *Machinists Local 701 (Avis Rent A Car)*, 280 NLRB 1312 (1986). The existence or nonexistence of an agreement is a question of fact. *Metro Medical Group*, 307 NLRB 1184 (1992). Moreover, minor discrepancies, which may exist, do

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Notwithstanding that a photocopying machine was available, Sapiro did not retain a copy of his proposed new contract language but believed that what he changed was in sec. 11.2 of the parties' agreement and that the new language was ''when the permanent vacancy occurs in a line of progression job that is above the entry level in the finishing department it shall be filled by advancing the individual who has the most seniority in the job vacancy and is working in the wage classification directly below the vacancy.'' In effect, this would establish classification seniority in the finishing department.

[36] Brooks specifically denied that Sapiro handed to him any proposed contract language changes during the March 12 meeting.

[37] Sapiro conceded preparing and mailing G.C. Exh. 13 to Kelly in early June.

[38] Sapiro testified that he failed to retain a copy of the cover letter for in his files. He added that Brooks never responded to this document. Notwithstanding his direct examination testimony, during cross-examination, Sapiro was confronted with a sworn affidavit, which he gave to the Board in connection with another matter and in which he failed to mention sending anything to Brooks and stated that nothing occurred between the March 12 meeting and his receipt of the draft collective-bargaining agreement from Riverwood on or about April 13.

Brooks denied seeing the contract language changes, set forth on the second page of G.C. Exh. 13, prior to receiving a copy of the document from Broughton Kelly on June 14 and specifically denied seeing the changes in the 2-week period after the March 12 meeting.

[39] Sapiro denied any later conversation with Kelly and denied telling the latter that the parties do not have a labor agreement. During cross-examination, however, he was confronted with his sworn affidavit in which he admitted receiving a telephone call from Kelly after June 15 during which Kelly asked him why Respondent would not execute the draft collective-bargaining agreement and, during which, Sapiro asked Kelly why he did not agree with what Sapiro had written on June 7.

not relieve a party's obligation to execute an agreement. *Bennett Packaging Co.*, 285 NLRB 602 (1992).

The determination as to whether Respondent and Riverwood reached agreement on a full and complete collective-bargaining agreement on December 10, 1992, one which was ostensibly ratified by the bargaining unit employees 2 days later and the memorialized version of which Respondent has failed and refused to execute on grounds that the document does not represent the parties' agreement, is a question of fact and requires resolution of the significant credibility conflicts found in the record. At the outset, in this regard, Anthony Aguiler, who testified on behalf of the General Counsel, was the most impressive of the five witnesses. His demeanor, while testifying, was that of an honest and straightforward witness, and I note that, having voluntarily terminated his employment with Respondent on December 15, 1992, he had no interest in the outcome of this proceeding. In contrast, Respondent's chief shop steward in the Bakersfield plant, Armando Flores, was the least impressive of the five witnesses. Not only was his demeanor, while testifying, that of a less than candid witness but also he exhibited a flawed memory, his assertion that the parties had agreed on job classification seniority for the employees in the finishing department was contradicted by the lack of any written confirmation and directly by Bernard Sapiro, and, most significantly, rather than looking directly at me, he averted me and cast his eyes downward when taking the oath. Based on the foregoing, I shall credit and rely on the testimony of Aguiler and place no reliance on the testimony of Flores.

Neither Broughton Kelly, Gary Brooks, nor Bernard Sapiro impressed me as being a particularly truthful witness, with each seeming to testify in accord with his own trial agenda. Thus, Kelly's repeated denials that, during the October 6, 1992 bargaining session or, indeed, at any time during the bargaining, he ever stated or agreed that resolution of the ''details'' of the seniority structure in the finishing department would be deferred until subsequent to ratification of the parties' eventual contract agreement, was contradicted by all other witnesses and by Riverwood's own bargaining notes. Likewise, given his two subsequent meetings with Respondent's representatives and bargaining unit employees on the subject and subsequent preparation of several forms of seniority rosters, Brooks' assertion that he met with Flores and showed him his initial draft of the seniority roster for the finishing department employees only as a matter of ''courtesy'' is questionable.[40] Also, noting that he never made a photocopy of the language changes, which he assertedly gave to Brooks on March 12, 1993, or retained a copy of the cover letter, to which was attached a copy of the second page of General Counsel's Exhibit 13 and which was assertedly sent to Brooks within a week or two of the above meeting, that Brooks' language in his March 26 and April 8 correspondence to Cuellar is wholly inconsistent with Respondent's contention that Brooks either accepted job classification seniority or approved contract language changes, which adopted such seniority, at the March 12, 1993 meeting, that Respondent's June 7 cover letter, to which the second page of Respondent's Exhibit 13 was attached, fails to mention that the suggested contract language had been offered to and seemingly approved by Brooks on March 12, and that his trial testimony was inconsistent with sworn affidavit testimony as to what occurred after the March 12 meeting, Sapiro's account of the meeting and his assertion that he sent a copy of the second page of General Counsel's Exhibit 13 to Brooks no more than 2 weeks after the meeting are of dubious reliability. While reiterating that none of the three individuals impressed me with his veracity, Anthony Aguiler corroborated Kelly and Brooks on a vital point—that the parties discussed how seniority in the finishing department would be determined and it ''was the time you had in the department.'' Further, the documentary evidence, in particular his March 26 and April 8 memos to Cuellar, corroborates Brooks as to what he agreed and did not agree on March 12. Finally, I note that Respondent failed to call Jeff Cuellar as a corroborative witness or for Sapiro or to controvert the testimony of Brooks and Kelly and failed to offer any explanation for not doing so. I find this crucial as Cuellar not only participated in the contract bargaining but also was Respondent's spokesperson at the March 12 meeting. In these circumstances, whenever they conflict, I shall credit the testimony of Gary Brooks over that of Bernard Sapiro, and I shall rely on the testimony of Broughton Kelly when uncontroverted or corroborated by others.

Based on my aforementioned credibility resolutions and the record as a whole, I find that, at the outset of the 1992 negotiations between Respondent and Riverwood for a successor collective-bargaining agreement, among each party's proposed changes from the existing contract terms, was an offer that the finishing department be converted to a line-of-progression department; that eventual agreement on this matter was reached on September 3; that the parties agreed that, if unchanged, an existing contract provision would be included in the successor agreement and neither party ever proposed any change in the seniority provisions of the expired collective-bargaining agreement; that, during the October 6 bargaining session, Broughton Kelly and Bernard Sapiro agreed to defer discussion of the ''details,'' pertaining to the placement of the finishing department employees in a seniority roster, until after ratification of a successor collective-bargaining agreement and to give Gary Brooks the responsibility for researching the number of days each current finishing department employee worked in the department and for drafting an initial seniority roster; and that, at the October 6 bargaining session, Kelly and Sapiro also agreed that Riverwood's Bakersfield plant management officials and Respondent and its shop stewards would meet and mutually resolve any problems concerning Brooks' draft seniority list. Moreover, I find that, neither party proposed that the expired contract's seniority provisions not apply to the finishing department; and that, during the October 6 bargaining session, Kelly informed Sapiro that Brooks would adhere to the above provisions with regard to formulating the seniority roster for the finishing department and the parties discussed, as the criterion for the placing of employees on a seniority roster, their entire time in the finishing department.[41] I further

[40] In the same vein, Kelly's denials that the intent of the parties, during bargaining, was that there should be mutual agreement, if not bargaining, on the finishing department seniority roster seem not credible.

[41] I credit Kelly and Brooks that the former never stated to Respondent's bargaining committee that Riverwood's intent was that no

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find that, on December 10, 1992, the parties reached agreement on all changes from the expired collective-bargaining agreement's terms and conditions of employment and shook hands on their agreement; that, later on December 10, Riverwood prepared and submitted to Respondent a ''golden-rod'' version of all the agreed-on contract changes; that the document accurately set forth the agreements of the parties; that, on December 12, the bargaining unit employees ratified a successor collective-bargaining agreement, consisting of the expired terms and conditions of employment and all agreed-on changes; that, later on December 12, Jeff Cuellar telephoned Brooks and informed him, without qualification, of the ratification; that, shortly thereafter, Riverwood placed all economic aspects of the parties' agreement into effect; and that, on April 12, Riverwood submitted a draft collective-bargaining agreement, which embodied the terms of the parties' December 10 agreement on a successor to their expired contract, to Respondent for execution.

As evidenced by the meeting participants' handshakes on December 10, 1992, by the bargaining unit employees' unqualified ratification on December 12, by Riverwood's subsequent implementation of the economic aspects, and by each party's own understanding of what occurred, there can be no doubt that, on December 10, both Respondent and Riverwood believed that they had reached full and complete agreement on the terms of a successor collective-bargaining agreement, including the conversion of the finishing department to one with line-of-progression jobs, and, based on my above findings, the record warrants the conclusion that, in fact, an agreement was reached on the language of a successor agreement. Notwithstanding their agreement on the wording of an agreement, however, the real issue is whether the parties arrived at a ''meeting of the minds'' as to all aspects of their bargaining, particularly regarding the application of job center seniority to the finishing department and what matters were deferred for resolution until subsequent to ratification. As to the former, as set forth above, each party engaged in bargaining, understanding that the negotiations concerned proposed changes from that which had been set forth in, and existed pursuant to, the expired collective-bargaining agreement and that, unless either proposed to change some aspect of the prior agreement, said provision would remain as a term of the successor agreement. Thus, neither party proposed changing any aspect of the seniority provisions of the expired agreement, including the forms of seniority and applications thereof and how an employee's seniority should be calculated, and, accordingly, there can be no doubt that the parties intended to include the entire seniority provision of their predecessor agreement in the successor agreement. Therefore, as Sapiro reluctantly admitted, given that the finishing department had been converted to a line-of-progression job structure, one may reasonably infer that, as with all other line-of-progression departments in Riverwood's Bakersfield plant, the parties intended, and clearly understood, that job center seniority would apply in devising a seniority roster for the department's employees. Of course, such an inference is not necessary, for not only did Sapiro fail to object to Kelly's statement that the company would apply the contract in determining seniority in the finishing department but also, as Aguiler reliably testified, the parties discussed seniority as being based on ''the time you had in the department . . . .'' In the above circumstances, I am convinced that a meeting of the minds had occurred with regard to the application of job center seniority to the seniority placement of employees in the finishing department.[42]

Moreover, I believe that the parties also reached a meeting of the minds as to the matters which were to be deferred for resolution until after ratification of the successor collective-bargaining agreement. Thus, while not being frank with regard to stating that discussion of the details, pertaining to seniority in case of promotion and layoff, should be deferred, Kelly, who was corroborated by Aguiler on this point,[43] stated that what remained was the formulation of the seniority roster for the finishing department. Likewise, Sapiro testified that the details, which remained unresolved at the conclusion of bargaining involved the placement of the finishing department employees into a seniority roster. Further, as conceded by Sapiro, the parties agreed that Gary Brooks would be charged with the responsibility for researching each finishing department employee's time on each job in the department and for drafting an initial seniority list.

In his posthearing brief, counsel for Respondent argues that there was no meeting of the minds over either the applicable seniority method for the finishing department or what matters were to be deferred for resolution; however, as set forth above, the record evidence does not support such an argument. Thus, not only have I credited the testimony of Aguiler and of Brooks that Kelly said that the company would apply the contract in determining seniority for the finishing department employees and that he also explained that each finishing department employee's seniority would be based on his time in the department but also Sapiro himself reluctantly conceded that Kelly made the former comment. Nevertheless, Respondent's counsel argues that, ''because the company and the union had different goals in mind, it is reasonable to conclude that the parties had different ideas about what they agreed to during negotiations.''[44] Assuming there

employees or the fewest possible number of employees would be harmed by the change of the finishing department to a line-of-progression department.

[42] Assuming arguendo that a subjective misunderstanding existed on this point, the law is clear that ''the expression 'meeting of the minds' in contract law does not literally require that both parties have identical subjective understandings on the meaning of material terms in the contract. Rather, subjective understanding (or misunderstandings) as to the meaning of terms which have been assented to are irrelevant, provided that the terms themselves are unambiguous . . . .'' *Vallejo Retail Trade Bureau*, 243 NLRB 762, 767 (1979); *Teamsters Local 287 (Reed & Graham)*, 272 NLRB 348 (1984). Here, no party argues that any term of G.C. Exh. 12, the draft agreement, which was submitted to Respondent for execution in mid-April, is ambiguous. Indeed, that the terms of the seniority provisions of the collective-bargaining would mandate the application of job center seniority in the finishing department seems clear given Respondent's proposed language changes.

[43] Aguiler, whose testimony was the most credible here, stated that the details, which were to be resolved by the company and the shop stewards, involved ''where everybody was supposed to go in the line'' and that nothing else was involved.

[44] On this point, I note that Flores and Sapiro asserted that Riverwood agreed that no employee would suffer harm as a result of transforming the finishing department into a line-of-progression department; however, I credit Brooks that such a claim was first raised during the May 3, 1993 telephone conference call and credit Brooks

is validity to this statement, as set forth above, given unambiguous contract terms, such as apparently involved here, that parties to an agreement may have different subjective understandings as to the meaning of the contract terms does not mean that there has been no meeting of the minds as to the terms. *Vallejo Retail Trade Bureau*, supra. As to the second part of counsel's argument, based on the testimony of Aguiler and Kelly and the concession of Sapiro, there can be no doubt that the parties agreed that what details remained for resolution involved the placing of employees into a seniority roster.[45] Although counsel also argues that the parties may have agreed to utilize a seniority system for the finishing department different than that used for the other line-of-progression departments, there just is no record evidence to support such a view; rather, as discussed above, no bargaining participant proposed that the existing seniority provision not apply to the finishing department. Based on the foregoing, I reject counsel's contention that no meeting of the minds on the above matters occurred here.

Counsel for Respondent next argues that Respondent is under no obligation to execute General Counsel's Exhibit 12 inasmuch as the parties agreed to mutually resolve the placement of finishing department employees in a seniority roster, as, at the March 12 meeting, the parties could not agree on the seniority roster for the finishing department employees, and as such establishes a disagreement over substantive terms of the parties' agreement. In support, counsel cites to *Luther Manor Nursing Home*, 270 NLRB 949 (1984). Therein, the Board refused to order an employer to execute a draft collective-bargaining agreement as the parties disagreed over the substance of certain contract terms and, as ''the requisite meeting of the minds as to all substantive matters did not occur.'' Id. at 949 at fn. 1.[46] Contrary to counsel, I find the cited decision to be inapposite. Thus, *Luther Manor* concerned the failure of the parties to reach a true meeting of the minds over substantive provisions of an asserted collective-bargaining agreement. Here, the simple fact is that the seniority roster for the finishing department was never considered to be a substantive term of the December 10 agreement between Respondent and Riverwood. Rather, it was an extraneous matter, the formulation of which happened to be governed by the terms of the parties' collective-bargaining agreement, and disagreements over the seniority positions of individual employees would have only delayed final agreement on a successor collective-bargaining agreement. This is the precise reason why the parties deferred resolution of the seniority roster until after the conclusion of the contract bargaining. That my view is correct is clear from the testimony of Respondent's president, Sapiro, who stated that ''you don't need [the seniority roster] in the contract language.'' Put another way, final agreement on the successor contract was not dependent on resolution of the finishing department seniority roster. Accordingly, this argument is without merit.

At the hearing, counsel for Respondent advanced another defense—that, inasmuch as, at the March 12 meeting, the parties agreed to a seniority list governed by classification seniority, as Brooks said such would require a change in the seniority language of the contract, as Sapiro drafted new language, as Brooks said that such was acceptable to him, and as Riverwood, therefore, recognized that the parties' December 10 agreement required change, Respondent was no longer under no obligation to execute General Counsel's Exhibit 12. Contrary to counsel, however, and based on my belief that Gary Brooks was a more reliable witness than Bernard Sapiro, I find that, at the start of the March 12 meeting, Brooks distributed a document, consisting of the existing contract seniority provisions, a job center seniority roster for the finishing department employees, a roll-up job center seniority roster showing each finishing department employee's time spent in each department job, and seniority rosters for each wage classification in each job based on job center seniority; that, using an overhead projection system, Brooks then displayed three of the above seniority lists; that a discussion ensued, with Respondent officials stating their objections to the placement of, at least, 13 individuals on Brooks' draft seniority roster and suggesting that the problem could be resolved by computing the seniority of the employees in the operator position on the basis of classification seniority and the remaining finishing department employees' seniority on the basis of job center seniority; that Brooks replied that, in view of the existing contract seniority language, classification seniority was not an option to be considered; that, at no time during this meeting, did Brooks and Respondent agree on any seniority roster, computed on the basis of classification seniority, for the finishing department employees; that, at no time during this meeting did Brooks state that he could not implement the agreed-on seniority roster without changing the contract seniority provision; and that, at no time during this meeting, did Bernard Sapiro, who attended the meeting,[47] draft new contract language, which would provide a contractual basis for such a seniority list, and give it to Brooks. Accordingly, as I do not believe that, at the March 12 meeting, the parties agreed to a finishing department seniority roster, which incorporated classification seniority, Brooks requested new seniority language, or Sapiro drafted such language and gave it to Brooks, I find that the credible record evidence does not support this asserted defense.

Based on the foregoing, I believe that, on December 10, 1992, Respondent and Riverwood arrived at a meeting of the minds on all of the substantive terms of a successor collec-

and Kelly that the latter never made such a statement during the 1992 bargaining.

[45] Counsel argues that the unresolved ''details'' involved more than merely the placing of employees in a seniority roster, specifically that they concerned ''how the line-of-progression system would be implemented in the finishing department,'' including bumping rights. I disagree. Thus, while, contrary to his testimony, I believe Kelly understood and stated that ''details'' would have to be resolved at some future date, he credibly testified that what was deferred concerned researching each finishing department employee's time in each finishing department job, adding the days spent on the jobs, and placing the employees in order of their total time in a seniority roster. Contrary to counsel, Sapiro also understood this to be what remained to accomplish. Thus, asked by me whether all that was involved in flushing out the details concerned fitting the employees into a seniority roster, Sapiro answered, ''Yes.'' Then, asked if anything else was involved, Sapiro answered, ''No.'' Finally, asked if what remained was just the development of the seniority roster, Sapiro said, ''Yes.''

[46] The parties disagreed over the language of, at least, 11 articles of the alleged contract, including the interpretation of the health insurance provision.

[47] I do not credit Sapiro's testimony that he was present at the February 12 meeting.

tive-bargaining agreement, which was ratified by the bargaining unit employees 2 days later and the economic terms of which were immediately implemented by Riverwood. There is no dispute that, on or about April 12, 1993, Riverwood submitted a draft collective-bargaining agreement (G.C. Exh. 12), which combined the unchanged provisions of the expired contract and the parties' December 10 agreements, which had been memorialized in the so-called golden-rod document, to Respondent for the latter's signature or that Respondent has failed and refused to execute said document. Inasmuch as there is no contention that General Counsel's Exhibit 12 misrepresented the parties' December 10 agreement, I find that Respondent violated Section 8(b)(3) of the Act by failing and refusing to execute said a copy of said document. *Teamsters Local 617 (Christian Salvesen)*, supra; *Auto Workers Local 365 (Cecilware Corp.)*, supra; *Electrical Workers IBEW Local 3 (Eastern Electrical)*, 306 NLRB 208 (1992).[48]

CONCLUSIONS OF LAW

1. Riverwood is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Since on or about April 12, 1993, by failing and refusing to execute the draft collective-bargaining agreement, which embodies the December 10 agreement between itself and Riverwood on a successor collective-bargaining agreement, Respondent has engaged in acts and conduct violative of Section 8(b)(3) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in unfair labor practices, violative of Section 8(b)(3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the purposes and policies of the Act. I have found that Respondent is the collective-bargaining representative of Riverwood's production and maintenance employees, engaged in bargaining with Riverwood, and, on December 10, 1992, reached a meeting of the minds with Riverwood on the terms of a successor collective-bargaining agreement. Further, I have found that Respondent has failed and refused to execute a draft collective-bargaining agreement, which was submitted to it on or about April 12, 1993, and which embodies the December 10 agreements. Accordingly, I shall recommend that Respondent be ordered, on request by Riverwood, to execute the draft agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[49]

ORDER

The Respondent, Graphic Communications Union, District Council No. 2, AFL–CIO, Bakersfield, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to execute the draft collective-bargaining agreement that was submitted to it on or about April 12, 1993, and which embodies the agreement reached between itself and Riverwood on a successor collective-bargaining agreement on December 10, 1992.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, forthwith execute the draft collective-bargaining agreement, which was submitted to it by Riverwood on or about April 12, 1993.

(b) Post at its office and meeting halls in Los Angeles and Bakersfield, California, copies of the attached notice marked ''Appendix.''[50] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to sign the collective-bargaining agreement, which was submitted to us by Riverwood International USA, Inc., a subsidiary of Manville Corporation

[48] In agreement with counsel for the General Counsel, after close scrutiny of the record, it is evident, to me, that the crux of Respondent's problem is not that G.C. Exh. 12 does not represent the agreements between itself and Riverwood but, rather, that executing the document would perpetuate Respondent's serious error in judgment during the 1992 negotiations, which resulted in 13 finishing department employees becoming harmed by the transformation of the finishing department into a line-of-progression department. Clearly, neither Respondent nor the bargaining unit employees correctly calculated the effect job center seniority would have on the employees in the finishing department and did not realize, during the negotiations, that changes were necessary in the contract seniority language in order to avoid resulting harm. Respondent, however, may not rescind its agreement with Riverwood on such a basis.

[49] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[50] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

(Riverwood), on or about April 12, 1993, and which embodies the terms of our December 10, 1992 agreement with Riverwood on the terms of a successor collective-bargaining agreement.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, on request, forthwith execute the collective-bargaining agreement, which was submitted to us by Riverwood on or about April 12, 1993.

GRAPHIC COMMUNICATIONS UNION, DISTRICT COUNCIL NO. 2